

IN THE SUPREME COURT OF NEW ZEALAND

SC 76/2015
[2015] NZSC 157

BETWEEN VINCENT ROSS SIEMER AND JANE
DINSDALE SIEMER
Applicants

AND KEVIN STANLEY BROWN
First Respondent

M PALMA
Second Respondent

A LOVELOCK
Third Respondent

JANE THEW
Fourth Respondent

REECE SIRL
Fifth Respondent

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Court: Glazebrook, Arnold and O'Regan JJ

Counsel: Applicants in person
A M Powell for the First to Fourteenth Respondents
V Casey for the Fifteenth Respondent

Judgment: 28 October 2015

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B Costs of \$2,500 are payable by the applicants (jointly and severally) to the respondents (collectively).**
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JULIE FOSTER
Sixth Respondent

JOHN MILLER
Seventh Respondent

DAVID THOMAS
Eighth Respondent

BRETT OTTO
Ninth Respondent

TREVOR FRANKLIN
Tenth Respondent

JOHN TAYLOR
Eleventh Respondent

JUERGEN ARNDT
Twelfth Respondent

KERWIN STEWART
Thirteenth Respondent

THE ATTORNEY-GENERAL OF NEW
ZEALAND
Fourteenth Respondent

B J REID
Fifteenth Respondent

REASONS

Background

[1] Mr and Mrs Siemer (the applicants) are the appellants in an appeal to the Court of Appeal filed on 26 January 2015.¹

[2] The applicants seek leave to appeal against a decision of Wild J.² In that decision, Wild J dealt with three procedural applications relating to the appeal:

¹ The decision appealed against is: *Siemer v Brown* [2014] NZHC 3175 (Toogood J).

² *Siemer v Brown* [2015] NZCA 276.

- (a) the first application related to an extension of time to file the case on appeal. Wild J granted an extension of time;
- (b) the second application was for recall of Wild J's judgment dated 16 March 2015 upholding the Registrar's decision refusing to dispense with security for costs.³ The recall application was on the basis that the Registrar's decision should have been reviewed by a panel of three judges, as in *Houghton v Saunders*,⁴ rather than by a single judge. The application was dismissed; and
- (c) the third application was an application for review of the Registrar's decision (dated 18 May 2015) refusing to accept for filing an application for review of Wild J's decision dated 12 May 2015.⁵ That decision was a review of the Registrar's decision to refuse to accept for filing an application for review of Wild J's earlier decision⁶ upholding the Registrar's decision refusing to dispense with security for costs. Wild J held that, given his decision was made under s 61A(3) of the Judicature Act 1908, rather than s 61A(1), a three judge panel review of his decision was not permitted.⁷

Discussion

[3] As this Court said in *Rabson v Registrar of the Supreme Court*, citing *Reekie v Attorney-General*,⁸ “the general rule under s 61A(2) is plain: it allows for a three judge bench to review decisions made under s 61A(1) but not under s 61A(3)”.⁹

[4] The applicants seek leave to appeal on the basis that the Court of Appeal is denying them a three judge panel review of the decision of Wild J. The applicants cite the case of *Houghton v Saunders* as an example of alleged differential treatment

³ *Siemer v Brown* [2015] NZCA 69.

⁴ *Houghton v Saunders* [2015] NZCA 141.

⁵ *Siemer v Brown* [2015] NZCA 161.

⁶ *Siemer v Brown*, above n 3.

⁷ *Siemer v Brown*, above 2, at [9]–[10].

⁸ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

⁹ *Rabson v Registrar of the Supreme Court* [2015] NZSC 74.

in the Court of Appeal.¹⁰ As this Court explained in *Rabson v Registrar of the Supreme Court*:¹¹

In *Houghton*, the appellant was seeking an extension of time under r 43 of the Court of Appeal (Civil) Rules 2005; under r 43(2), the Court (ie a panel of three judges), in situations where the application is contested (as was the case in *Houghton*), may hear and grant an extension of time. In addition to an extension of time, the appellant was seeking directions regarding the electronic case on appeal and a review of the Registrar's decision increasing security for costs. It was open to the Court of Appeal to have the three-panel Court deal with security for costs at the same time as it was dealing with other related matters.

[5] In any event, there is no issue of public or general importance. As this Court has said previously:¹²

In any event, even if (contrary to what we say above) the Court of Appeal had erred in *Houghton*, this does not justify granting leave to appeal. The principles governing such jurisdictional issues in the Court of Appeal were settled by this Court in *Reekie*. Any errors in applying that judgment in other cases cannot justify leave to appeal being granted in this case.

[6] The applicants have made almost identical submissions concerning *Houghton v Saunders* in another case.¹³ As a result, it is an abuse of process to continue to repeat these unsuccessful arguments.

Disposition

[7] The application for leave to appeal is therefore dismissed.

[8] Costs of \$2,500 are payable by the applicants (jointly and severally) to the respondents (collectively).

Solicitors:
Crown Law Office, Wellington for Respondents

¹⁰ *Houghton v Saunders*, above n 4.

¹¹ *Rabson v Registrar of the Supreme Court*, above n 9, at [5].

¹² At [6].

¹³ *Siemer v Brown* [2015] NZSC 102. The applicants must also be aware that identical arguments have also been dismissed in numerous other cases before this Court: see for example *Creser v Creser* [2015] NZSC 104; and *Rabson v Registrar of the Supreme Court* [2015] NZSC 112.